Swift e-Bulletin

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Week – August 21st to August 25th

<u>Quote for the week:</u>

"You only live once, but if you do it right, once is enough”

– *Mae West* *(American Actress)*

Introduction

We welcome you to our weekly newsletter!

The ‘Swift e-Bulletin’ - weekly newsletter, covers all regulatory updates and critical judgements passed during the week. We hope that you liked our previous editions and found it to be of great value in its content. We want this newsletter to be valuable for you so, please share your feedback and suggestions to help us improve.

Further, various regulatory authorities have been proactive in bringing significant regulatory changes in recent challenging times. This week’s newsletter covers various circulars/notifications issued by certain regulatory authorities such as the Ministry of Corporate Affairs (“MCA”) and Securities and Exchange Board of India (“SEBI”)

The Regulatory authorities provided various updates/relaxations, some of which being:

- MCA vide Circular dated August 23, 2023 waived the additional fees for filing of various forms for Limited Liability Partnership (LLP).

- SEBI vide Notification dated August 22, 2023 issued SEBI (Depositories and Participants) (Second Amendment) Regulations, 2023.

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of August 21st to August 25th.

Thank you,
Swift team

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REGULATORY UPDATES

SEBI

1. **SEBI vide Notification dated August 22, 2023 issued SEBI (Depositories and Participants) (Second Amendment) Regulations, 2023.**

- SEBI vide this Notification issued the Securities and Exchange Board of India (Depositories and Participants) (Second Amendment) Regulations, 2023.

- In the Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018, the following shall be substituted:

  - **Regulation 23 shall be substituted with the following, namely**:

    – 1(a): The 'fit and proper person' criteria shall apply to the applicant, depository, its shareholders, directors and key management personnel at all times.

    – (4): If any director or key management personnel of a depository is not deemed to be fit and proper under sub-regulation (3), the depository shall replace such a person within thirty days from the date of such disqualification, failing which the fit and proper person criteria may be invoked against the depository.

    – (6) An order passed against the person by any other regulatory authority may be taken into account by the Board while determining the fit and proper person criteria.

  - **Regulation 24, sub- regulation (14) shall be substituted with the following, namely**:

    – in clause (a) and in the proviso to clause (b), the words "comprises of" shall be substituted with the words "consists of"

- This Regulation shall come into force from the date of publication in the Official Gazette.

To read the Notification in detail, please click here.

2. **SEBI vide Notification dated August 23, 2023 inserted Chapter VI in SEBI (LODR) Regulations, 2015.**

- SEBI vide Notification dated August 23, 2023 inserted Chapter VI in SEBI (LODR) Regulations, 2015 which shall provide the framework for voluntary delisting of non-convertible debt securities or non-convertible redeemable preference shares and obligations of the listed entity on such delisting.

- Chapter VI of SEBI (LODR) Regulations, 2015 shall consider the following:

- **64A. Applicability:**

  – The provisions of this chapter shall be applicable to voluntary delisting of all listed non-convertible debt securities or non-convertible redeemable preference shares from all or any of the stock exchanges where such non-convertible debt securities or non-convertible redeemable preference shares are listed.

  – In case of delisting pursuant to a resolution plan under the Insolvency Code, the details of delisting of non-convertible debt securities or non-convertible redeemable preference shares shall be disclosed to the stock exchanges.

- **64B. In-principle approval of the stock exchanges:**

  – The listed entity shall make an application to the relevant stock exchange(s) for seeking in-principle approval for the proposed delisting in the form specified by such stock exchange, not later than fifteen working days from the date of passing of the board resolution or receipt of any other statutory or regulatory approval, whichever is later and the stock exchange shall dispose off the application not later than fifteen working days from the date of receipt of such complete application.

- **64C. Obligations of the listed entity:**

  – The listed entity shall ensure that the process of obtaining necessary approval commences within three working days of the grant of in-principle approval by the stock exchange(s).

  – The following information shall be disclosed by the listed entity on its website as well as to the stock exchanges, within two working days from the date of receipt of in-principle approval for such delisting:

    ➢ the name of the stock exchange from which the securities are sought to be delisted together with the details of all such securities or shares that are sought to be delisted.

    ➢ the objects and reasons for delisting of non-convertible debt securities or non-convertible redeemable preference shares.

    ➢ the proposed timetable from the cut-off date as specified in clause (b) till the date of making final application to the stock exchanges for such delisting.

    ➢ a statement from the debenture trustee on the adequacy of security cover in case of secured non-convertible debt securities.

    ➢ disclosure of non-convertible debt securities or non-convertible redeemable preference shares held by the related parties or by any person on behalf of the issuer or its related parties and an undertaking that such persons shall not vote on the proposal.

- Other provisions introduced under Chapter VI of SEBI (LODR) Regulations, 2015 are:

  - **64D. Notice of delisting.**
  - **64E. Approval from the holders and no-objection letter from the debenture trustee.**
  - **64F. Failure of delisting proposal.**
  - **64G. Final application to the stock exchange.**
  - **64H. Delisting from some of the stock exchanges.**
  - **64I. Monitoring of compliance by the stock exchanges**

- This Notification shall come into force from the date of publication in the Official Gazette.

To read the Notification in detail, please click here.

3. **SEBI vide Notification dated August 22, 2023 issued Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Third Amendment) Regulations, 2023**

- SEBI vide the said Notification has bought amendment under Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018

- SEBI vide the said Notification has substituted regulation 20 as below: -

  - The 'fit and proper person' criteria shall apply to the applicant, recognised stock exchange, recognised clearing corporation, its shareholders, directors and key management personnel at all Times.
  - The recognised stock exchange or recognised clearing corporation shall ensure that all its shareholders, directors and key management personnel are fit and proper persons at all times.
  - An applicant, a recognized stock exchange or a recognized clearing corporation shall be deemed to be a fit and proper person if the fullfill the criteria as mentioned under the regulation 20.

- If any director or key management personnel of a recognised stock exchange or recognised clearing corporation is not deemed to be fit and proper, the recognised stock exchange or recognised clearing corporation shall replace such a person within thirty days from the date of such disqualification, failing which the fit and proper person criteria may be invoked against the recognised stock exchange or recognised clearing corporation.

- Any disqualification of the recognised stock exchange or recognised clearing corporation under sub regulation 20 (2) shall not have any bearing on the fit and proper status of the directors or key management personnel unless the directors or key management personnel are also found to incur the same disqualification in the said matter.

- The Board while determining the fit and person criteria shall take into account any order passed against the person by any other regulatory authority.

- The decision of the Board shall be final, If any question arises on the decision of a recognised stock exchange or recognized clearing corporation as to whether a person is a fit and proper person.

- Further, SEBI under regulation 23 has bought amendment by substituting the word "comprise of" in the regulation with word "consist of"

To read the Notification in detail, please click here

4. SEBI vide Circular dated August 24, 2023 mandated additional disclosures by Foreign Portfolio Investors ("FPIs") that fulfil certain objective criteria

- Certain FPIs have been observed to hold concentrated portion of their equity portfolio in a single investee company/ corporate group. Such concentrated investments raise the concern and possibility that promoters of such investee companies/ corporate groups, or other investors acting in concert, could be using the FPI route for circumventing regulatory requirements such as that of disclosures under Substantial Acquisition of Shares and Takeovers Regulations, 2011 (SAST Regulations) or maintaining Minimum Public Shareholding ("**MPS**") in the listed company.

- The Government of India (**"GoI"**) issued Press Note 3 ("**PN3**") dated April 17, 2020, requiring an entity of a country that shares land border with India, or where the Beneficial Owner (**"BO"**) of an investment into India is situated in or is a citizen of any such country, to invest only under the Government route.

- Further, PN3 is not applicable to FPI investments, there are concerns that entities with large Indian equity portfolios could potentially disrupt the orderly functioning of Indian securities markets by misusing the FPI route.

- Thus, identification of BOs of FPIs, under the Prevention of Money Laundering (Maintenance of records) Rules, 2005 (**"PMLR"**), is that no natural person is identified as the BO of several FPIs based on economic interest or ownership interest, since each investor entity in the FPI may be below the threshold prescribed in the PMLR.

- There is a possibility that the same natural person may hold a significant aggregate economic interest in the FPI via various investment entities, each of which are individually below the threshold for identification as a BO as prescribed in PMLR.

- SEBI in order to mitigate the aforesaid concern, notified SEBI (Foreign Portfolio Investors) (Second Amendment) Regulations, 2023, on August 10, 2023, to obtain granular information of persons having any ownership, economic interest, or control on some objectively identified FPIs.

- As per the amendment, the FPIs are liable to provide information or documents in relation to the persons with any ownership, economic interest, or control, in the FPI, and the manner of same is been specified by SEBI vide this circular dated August 24, 2023.

- Granular details of all entities holding any ownership, economic interest, or exercising control in the FPI, on a full look through basis, up to the level of all natural persons, without any threshold, shall be provided by FPIs that fulfil any of the criteria as mention in the said circular to the respective DDPs in the format specified in the Standard Operating Procedure (**"SOP"**)

- The constituents of FPI investor group which collectively hold more than INR 25,000 crore of equity AUM in the Indian markets, is exempted from making the additional disclosures if the investor group consists of FPIs that qualify for exemption mentioned in the said circular and the net equity AUM of the investor group, after deducting the AUM of such exempted FPIs, falls below INR 25,000 crore.

- Further, After making the aforesaid deductions of AUM of such exempted FPIs, in case the equity AUM of the remaining FPIs of the investor group continues to exceed INR 25,000 crore, only the non – exempted FPIs of the investor group shall be liable for making the disclosures.

- FPIs shall not be required to make any disclosures in case their investments are realigned within the prescribed thresholds and the timelines mentioned in the circular.

- Non – disclosures in this regard shall render the registration of the FPI invalid and the FPI shall not make any further purchases. Further, the FPI shall liquidate its securities and exit the Indian securities market by surrendering its FPI registration within 180 calendar days from the day the certificate becomes invalid.

- During the aforementioned 180 calendar days, the investee companies shall restrict the FPI's voting rights to its actual shareholding or its shareholding corresponding to 50% of its equity AUM on the date its FPI registration is rendered invalid, whichever is lower.

- Depositories shall introduce new freeze reason codes and Stock Exchanges shall put in place appropriate mechanism / systems to ensure compliance of the above and to facilitate blocking of the accounts of the FPIs.

- For monitoring compliance with the 50% exposure limit in a single corporate group, a repository containing names of companies forming a part of each Indian corporate group, shall be publicly disseminated on the websites of Stock Exchanges/ Depositories.

- The said Circular shall be applicable to FPIs, DDPs and Custodians, the Depositories, the Stock Exchanges and Clearing Corporations, Registrars to an Issue and Share Transfer Agents and Listed Companies.

- The Circular shall come into effect from November 01, 2023.

To read the Circular in detail, please click here.

5. **SEBI vide Circular dated August 24 issued Modification in Cyber Security and Cyber Resilience framework of Stock Exchanges, Clearing Corporations and Depositories.**

- SEBI vide Circular dated July 06, 2015 and May 20, 2022 issued prescribed framework for Cyber Security and Cyber Resilience for stock exchanges, clearing corporations and depositories.

- SEBI vide the said Circular has bought changes under clause 3 of Circular dated May 20, 2022 as under:-

    - MIIs are mandated to conduct comprehensive cyber audit at least 2 times in a financial year. Along with cyber audit reports, henceforth, MIIs are directed to submit a declaration from the MD/CEO certifying that:

        - Comprehensive measures and processes including suitable incentive/disincentive structures, have been put in place for identification/detection and closure of vulnerabilities in the organization's IT systems.

        - Adequate resources have been hired for staffing their Security Operations Center (**"SOC"**).

        - There is compliance by the MII with all SEBI circulars and advisories related to cyber security.

- Further, MIIs, whose systems have been identified as Critical Information Infrastructure (CII) by National Critical Information Infrastructure Protection Centre (**"NCIIPC"**), are mandated to send regular updates/closure status of the vulnerabilities found in their respective "protected systems" to NCIIPC.

- MIIs are required to take necessary steps to put in place systems for implementation of the circular, including necessary amendments to the relevant byelaws, rules and regulations, if any.

- The status of the implementation of the aforesaid provisions shall be communicated by MIIs within 30 days from the date of this Circular.

- The Circular shall be applicable to all stock exchanges, all clearing corporations and all depositories.

- The provisions of the said Circular shall immediately come into effect.

To read the Circular in detail, please click here.

MCA

1. **MCA vide Circular dated August 23, 2023 waived the additional fees for filing of various forms for Limited Liability Partnership (LLP).**

- MCA vide Circular dated August 23, 2023 introduced the amnesty scheme under which it has waived the additional fees for filing of various forms for LLP.

- As many stakeholders are facing difficulties in filing of Form- 3, Form -4 and Form-11 in the new MCA V3 portal for multiple reasons including the mismatch in master data, unable to submit, etc. Ministry for such errors has provided an opportunity through this scheme to update the filings without any additional fees.

- The salient features of this scheme are:

  - While filing these forms, the details according to existing master data will be pre-filled and stakeholders shall have the facility to edit and update the correct details.

  - This scheme is available for form-3 and form-4 having event dates January 01, 2021 onwards and can be filed without any additional fees and for form-11 it is 2021-22 onwards.

  - These forms will be processed through STP mode and shall be available from September 01, 2023 to November 30, 2023.

  - The LLP's availing this scheme shall not be liable for any action for delayed filing of the Form-3, Form-4 and Form-11

To read the Scheme in detail, please click here

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About Swift

Swift India Corporate Services LLP ("Swift") (Formerly known as SwiftIndiaInc Corporate Services Private Limited) established in the year 2005, is an associate entity of Nishith Desai Associates — Legal & Tax Counseling Worldwide (legal and tax consulting firm).

We are a team of professionals with rich corporate, legal and secretarial backgrounds. We are a premier corporate compliance firm that caters to the needs and demands of our global clients. Swift aims to provide quick and pragmatic corporate solutions alongside high-quality compliances.

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